

CV 10 2137

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

MAYA GOLUBEVA on behalf of herself
and all others similarly situated,

★ MAY 10 2010 ★

Plaintiff, (ST)

LONG ISLAND OFFICE

-against-

GC SERVICES LIMITED PARTNERSHIP

COGAN, J.

Defendant.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff seeks redress for the illegal practices of GC Services Limited Partnership concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides in New York County, New York.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to Citibank.
4. Upon information and belief, GC Services Limited Partnership is a foreign corporation.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

Allegations Particular to Maya Golubeva

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. On or about June 24, 2009 defendant sent the plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes.
11. Plaintiff is not sure at the time of the filing of the complaint as to whether the said June 24, 2009 is the first or a subsequent letter in the defendant’s letter series.
12. Said letter sets forth the balance being \$18,378.51.
13. Said letters states in pertinent part as follows: “As of the date of this letter, you owe \$18,378.51. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you.”
14. The plaintiff received a subsequent letter dated July 15, 2009.

15. Said letter sets forth the amount owed at the same amount as in the said June 24, 2009 letter.
16. Said letter also sets forth the language as set forth in paragraph 13 above.
17. The explanatory language concerning the amount of the debt is false.
18. The amount of the debt on that date was not \$18,378.51.
19. The least sophisticated consumer is charged with the belief and knowledge that credit card debt increases over time (*See Weiss v. Zwicker*, 664 F.Supp. 219 [E.D.N.Y. 2009]) which did not occur in this instance.
20. After having received the two letters, the consumer may believe that the defendant is not imposing additional interest or other charges for the Citibank purported debt.
21. Upon receipt of the June 24, 2009 letter the consumer would be confused as to the question of the imposition of interest or other charges.
22. The defendant sent the plaintiff a subsequent letter dated August 10, 2009.
23. Said letter sets forth the balance at \$18,922.59.
24. Said balance is an increase over the balance set forth in the prior two letters set forth above.
25. The least sophisticated consumer would construe the explanatory language and its implications in more than one fashion, one of which is false.
26. Said collection letter series contains deceptive representations in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(10).

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of herself and the members of a class, as against the defendant.

27. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-26 as if set forth fully in this Cause of Action.

28. This Cause of Action is brought on behalf of plaintiff and the members of a class.

29. The Class consists of consumers who received the same form letter, as did the plaintiff.

30. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent collection letters (a) bearing the defendant's letterhead in substantially the same letter series as the letter sent to the plaintiff, the letter series being set forth above (b) the collection letters were sent to a consumer seeking payment of an alleged personal debt owed to American Express; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. § 1692e(10).

31. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

(A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.

(B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

- (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.
- (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.

32. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

33. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

34. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

35. The defendant's actions violate the Fair Debt Collection Practices Act.

36. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York
May 7, 2010



Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

Attorney for the Plaintiff

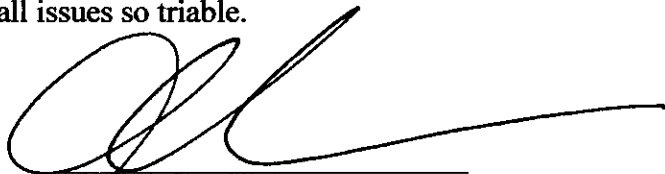
483 Chestnut Street

Cedarhurst, New York 11516

Telephone (516) 791-4400

Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.



Adam J. Fishbein (AF-9508)



GC SERVICES LIMITED PARTNERSHIP
COLLECTION AGENCY DIVISION
6330 GULFTON, HOUSTON, TX. 77081

PO BOX 2667 (064)
HOUSTON TX 77252-2667
RETURN SERVICE REQUESTED
JUNE 24, 2009

BALANCE DUE STATEMENT

YOU OWE
CITIBANK (SD), N.A.

BALANCE DUE
* \$18,378.51

ACCOUNT NUMBER
5121075000700208

USE ENCLOSED ENVELOPE AND SEND PAYMENT TO: 

0308109173000405-0185-01
MAYA V GOLUBEVA

8216 17TH AVE FL 2
BROOKLYN NY 11214-2116



PO BOX 1545
HOUSTON TX 77251
2089050
(800) 920-8715

PLEASE DETACH AND RETURN UPPER PORTION OF STATEMENT WITH PAYMENT.

RE: SEARS GOLD MASTERCARD

Dear Maya V Golubeva:

Your account with Citibank (SD), N.A., in the amount of \$18,378.51, has been referred to us.

By this time you must realize that you are delinquent.

Please send us your payment in full in the enclosed envelope. Please include this letter to assure proper credit of your payment.

Please remit your balance in full or phone (800) 920-8715.

Please make your check payable to Citibank (SD), N.A. and return it with this notice to the post office box listed above. If you have any questions, call the phone number indicated above.

0308109173000405

IMPORTANT: BE CERTAIN YOUR ACCOUNT IS CORRECT.

HOME PHONE : _____
NEW ADDRESS : _____
EMPLOYER : _____ PHONE: _____
EMPLOYER ADDRESS : _____

NYC DEPARTMENT OF CONSUMER AFFAIRS LICENSE NUMBER 0982212.

* As of the date of this letter, you owe \$18,378.51. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION

CDP1

3157

GC SERVICES LIMITED PARTNERSHIP

CALIFORNIA RESIDENTS: THE STATE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT REQUIRE THAT, EXCEPT UNDER UNUSUAL CIRCUMSTANCES, COLLECTORS MAY NOT CONTACT YOU BEFORE 8 A.M. OR AFTER 9 P.M. THEY MAY NOT HARASS YOU BY USING THREATS OF VIOLENCE OR ARREST OR BY USING OBSCENE LANGUAGE. COLLECTORS MAY NOT USE FALSE OR MISLEADING STATEMENTS OR CALL YOU AT WORK IF THEY KNOW OR HAVE REASON TO KNOW THAT YOU MAY NOT RECEIVE PERSONAL CALLS AT WORK. FOR THE MOST PART, COLLECTORS MAY NOT TELL ANOTHER PERSON, OTHER THAN YOUR ATTORNEY OR SPOUSE, ABOUT YOUR DEBT. COLLECTORS MAY CONTACT ANOTHER PERSON TO CONFIRM YOUR LOCATION OR ENFORCE A JUDGMENT. FOR MORE INFORMATION ABOUT DEBT COLLECTION ACTIVITIES, YOU MAY CONTACT THE FEDERAL TRADE COMMISSION AT 1-877-FTC-HELP OR WWW.FTC.GOV.

COLORADO RESIDENTS: FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAN.CFM GC SERVICES 6330 GULFTON, HOUSTON, TX 77081. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CONSUMER INFORMATION:

UNLESS YOU, WITHIN THIRTY (30) DAYS AFTER YOUR RECEIPT OF GC SERVICES' INITIAL WRITTEN NOTICE TO YOU CONCERNING THIS DEBT, DISPUTE THE VALIDITY OF THE DEBT OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED TO BE VALID BY GC SERVICES. IF YOU NOTIFY GC SERVICES IN WRITING WITHIN THE ABOVE DESCRIBED THIRTY (30) DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, GC SERVICES WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGMENT AGAINST YOU AND A COPY OF SUCH VERIFICATION OR JUDGMENT WILL BE MAILED TO YOU BY GC SERVICES. UPON YOUR WRITTEN REQUEST WITHIN THE ABOVE DESCRIBED THIRTY (30) DAY PERIOD, GC SERVICES WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

THE DEMANDS FOR PAYMENT IN THIS LETTER DO NOT REDUCE YOUR RIGHTS TO DISPUTE THIS DEBT OR ANY PORTION THEREOF, AND/OR TO REQUEST VERIFICATION WITHIN THE THIRTY (30) DAY PERIOD AS SET FORTH ABOVE.

ESTE ES UN INTENTO PARA COBRAR UNA DEUDA Y CUALQUIER INFORMACION OBTENIDA SERA USADA CON ESE PROPOSITO.

INFORMACION AL CONSUMIDOR:

A MENOS QUE USTED, DENTRO DE LOS TREINTA (30) DIAS DE RECIBIR NOTIFICACION ESCRITA INICIAL RELATIVA A ESTA DEUDA, DISPUTE LA VALIDEZ DE LA DEUDA, O CUALQUIER PARTE DE LA MISMA, LA DEUDA SERA ASUMIDA COMO VALIDA POR GC SERVICES. SI USTED NOTIFICA A GC SERVICES POR ESCRITO DENTRO DEL ANTES MENCIONADO PERIODO DE TREINTA (30) DIAS, QUE LA DEUDA, O CUALQUIER PORCION DE LA MISMA, ES CUESTIONADA, GC SERVICES OBTENDRA VERIFICACION DE LA DEUDA O UNA COPIA DE DICHA VERIFICACION O DICTAMEN. SI USTED LO SOLICITA POR ESCRITO DENTRO DEL ANTES MENCIONADO PERIODO DE TREINTA (30) DIAS, GC SERVICES LE COMUNICARA EL NOMBRE Y DIRECCION DEL ACREEDOR ORIGINAL, SI FUERA DISTINTO DEL ACREEDOR ACTUAL.

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GC Services Limited Partnership
Collection Agency Division
6330 Gulfton, Houston, Tx. 77081

PO BOX 1545 (064)
HOUSTON TX 77251
RETURN SERVICE REQUESTED
JULY 15, 2009

BALANCE DUE STATEMENT

0308109173000405-0185-02
MAYA V GOLUBEVA

8216 17TH AVE FL 2
BROOKLYN NY 11214-2116

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HOUSTON TX 77251

(800) 920-8715

2089050

PLEASE DETACH AND RETURN UPPER PORTION OF STATEMENT WITH PAYMENT.

RE: SEARS GOLD MASTERCARD

Dear Maya V Golubeva:

You have not complied with our previous requests for payment in full on your seriously overdue account.

We urge you to take this opportunity to resolve your account or to call us to discuss your account.

Please send the balance in full. For proper credit to your account, please return this notice with payment.

Please make your check payable to Citibank (SD), N.A. and return it with this notice to the post office box listed above. If you have any questions, call the phone number indicated above.

Ms. C. Baker
Account Representative

CITIB-D-1

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USE ENCLOSED ENVELOPE AND SEND PAYMENT TO:

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